

REMARKS

As an initial matter, the Examiner had indicated in his answer on page 1 that Appellants' Brief did not contain a statement identifying the related appeals and interferences which will directly affect or have a bearing on the decision in this case. However, Appellants' wish to respectfully point out that such a section was included in the Amended Brief filed on April 13, 2005 on page 2.

Regarding the substantive comments in the Answer, the Examiner is continuing to mischaracterize the structure specifically shown and described in U.S. Patent 6,311,768 ("Jamison et al."). The presently appealed claims all recite "end walls." The Answer has completely mischaracterized the dissimilar structure of flanges as found in Jamison et al. to be equivalent to the recited end walls. The flanges of Jamison et al. simply cannot be construed to be analogous as the end walls recited in the presently appealed claims.

The Answer repeatedly refers to "end walls" or "walls (50,52)." However, referring to the language used by Jamison et al., the structure shown at (50,52) is actually described as "raised peripheral edge portions" and "peripheral flanges." Jamison et al. at column 3, lines 10-11 and 32. At no point does Jamison et al. refer to this structure as "end walls" as characterized by the Examiner. Were the flanges (50,52) actually end walls, it was well within Jamison et al.'s knowledge to describe the structure as such. Indeed, when referring to the manifolds, Jamison et al. describes side walls (70,72). Therefore, Jamison et al. expressly distinguished between structure that could be considered side walls, such as on the manifold, and the flanges (50,52) of the plates.

The Answer also states on page 4 that Appellants rely on structure not recited in the claims. However, the statements in Appellants' Brief, found at p. 5, were made to distinguish between the flanges (50,52) in Jamison et al. and the actual end walls (unnumbered) in Jamison et al. (Refer to Appellants' brief p. 6 for a figure indicating the unnumbered structure). The statements were made to indicate the distinction in functions of the structures of Jamison et al. Specifically, the flanges (50,52) are used to provide a broad flat surface for sealing the plate pairs (20) together and more importantly, provide the slot (84) for retaining the collection tank (68) against the plate pairs (20), as opposed to defining the flow path for the fluid and also providing the generally rectangular shape of the tube as is done by the unnumbered end walls in Jamison et al. and the end walls in the present application. The flanges (50,52) perform neither of these two functions. The Answer asserts that the flanges (50,52) can perform the function of defining the flow path. However, when the structure is assembled, the flanges (50,52) are bonded together and therefore, the flanges do not define any flow path. Instead, the unnumbered end walls of Jamison et al. define the flow path.

Additionally, these separate functions would be easily understood by those skilled in the art to distinguish between completely different structures. Similarly, as plainly seen in the edited version of Figure 4 in Appellants' brief, the structures are completely different in size, shape and orientation. In short, those skilled in the art would simply not interpret the flanges (50,52) of Jamison et al. to be end walls as recited in the claims of the present application.

On page 5, the Answer states that “the end walls (50,52) are located at the end of the sidewalls (48).” This simply is not true. Again, referring to the edited version of Figure 4 of Jamison et al., the unnumbered end walls intervene between the sidewalls (48) and the flanges (50,52).

The Answer also attempts to mischaracterize the actual unnumbered end walls are just a part of the flanges (50,52) of Jamison et al. By the Examiner’s analysis anything connected to the flanges (50,52) would be considered part of the flanges. Indeed, by the Examiner’s analysis, the sidewalls (48) would be part of the flanges (50,52) thereby rendering the entire plate structure of Jamison et al. indistinguishable from the flanges (50,52). Contrary to this analysis, it would be clear to one skilled in the art that the plates (20) actually have discrete sections with specific shapes and functions. Two discrete structures that are connected do not spontaneously become one structure as asserted by the Answer. To do so, would render the meaning of the terms of the presently appealed claims, as well as those of thousands of issued patents, meaningless.

Regarding issue 2, the Answer also mischaracterizes the shape of the tubes in Jamison et al. On page 6, the answer provides a perspective view from above the tubes of Jamison et al. However, this perspective is wrong. As understood by those skilled in the art, when referring to the shape of a tube, the perspective is taken as a cross-section of the tube perpendicular to the flow path. The understanding of those skilled in the art is further supported by the significant number of U.S. Patents that the USPTO has permitted to issue describing heat exchanger tubes as being rectangular or generally rectangular shaped. Two examples of such patents are U.S. Patent 6,779,591 and 6,305,274, each

of which claim "rectangular tube" and "rectangular or square heat exchanger tubes" respectively. The shape of the tubes claimed, as well as the disclosure in each of these patents support the perspective stated above by Appellants and are illustrative of the understanding of those skilled in the art.

If the Examiner's perspective were taken, round, oval and square, as well other shaped tubes, would all appear rectangular. This is simply the wrong perspective. Taken along the proper perspective, which is well understood by those skilled in the art, Jamison et al. is more accurately characterized as saucer shaped as the flanges (50,52) extend substantially outwardly from the plate pairs (20). Therefore, Jamison et al. does not disclose or suggest generally rectangular shaped tubes.


In summary, while the Examiner is correct that limitations should be not read into the claims from the specification; however that statement is not a license to completely ignore the plain meaning of claim terms, especially as accepted by those skilled in the art, nor is it a license to completely ignore the context provided by the specification so as to strip any meaning, however clear and accepted, from the terminology used in the claim. Jamison et al. can only be read on the claims at issue if the plain meaning of the terms used in the claims, together with the context provided by the specification, is ignored. This is improper.

CONCLUSION

In view of the foregoing, as well as the arguments made in the previously submitted brief, Appellants respectfully request withdrawal of the rejections of claims 1, 2, and 11 and allowance of the case.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By 
Jeffery N. Fairchild
Reg. No. 37,825

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500 West Madison Street
Suite 3800
Chicago, IL 60661-2511
(312) 876-1800